IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.150 OF 2005

Yashwant Chandrakant Poll ...Petitioner

vs.

Smt.Sushma Yashwant Poll & Ors. ...Respondents

Mr.J.M.Puranik for the Petitioner
Mr.D.P.Dindikar for the Respondents
Ms Rajashree M. Gadhvi,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 16,2005.

P.C.:

1. Rule. Respondents waive service. Taken up for hearing forthwith.

2. Heard Counsel appearing for the parties. In an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 filed by the Respondent No.1-wife against the Petitioner-Husband, an order was passed directing the Petitioner to pay interim maintenance. The Petitioner did not comply with the said order. There are three separate orders passed by the Joint C.J.J.D. and J.M.F.C.,Ulhasnagar directing detention of the Petitioner under Section 125 (3) of the said Code. All the three orders are passed directing the Petitioner to suffer imprisonment for a period of one month. The first order was passed on 12th March 2004, the second order was passed on 27th October 2004 and the last order was passed on 5th January 2005. The order dated 5th January 2005 was impugned by the Petitioner by filing a Criminal Revision

Application No.3 of 2005 in the Sessions Court. An application for stay of the operation of the order dated 5th January 2005 was made in the said Revision application. However, the learned Additional Sessions Judge did not grant stay and directed that the notice of the application should be served on the Respondent No.1. The order passed on 5th January 2005 and the order dated 10th January 2005 on the said Application for stay made by the Petitioner are impugned in this Petition.

3. It is not in dispute between the parties that the Petitioner has undergone simple imprisonment for a period of 26 days on the basis of order dated 5th January 2005. Under the interim order passed by this Court, the Petitioner has been released.

4. It is to be noted here that on 27th October 2004 an order was passed against the Petitioner directing him to undergo simple imprisonment for a period of one month. The said order was passed on account of default committed by the Petitioner till the date of passing the order. The order dated 5th January 2005 which is impugned in this Petition naturally relates to the period which is subsequent to 27th October 2004. Thus, the said order is relating to default for a period of about three months. Considering the fact that under Section 125 of the said Code, maximum period for which the Petitioner could have been directed to undergo imprisonment is

30 days, in my view, the punishment undergone by the Petitioner for 26 days is sufficient considering the extent of default on the basis of which the order dated 5th January 2005 is passed. Accordingly, the order dated 5th January 2005 needs modification.

4. Hence I pass the following order :

i) The order dated 5th January 2005 passed by the Joint C.J.J.D. & J.M.F.C.,Ulhasnagar in Misc.Application No.28 of 2001 below application at Exh.34 is modified and the Petitioner is sentenced to suffer simple imprisonment for a period of 26 days which is already undergone by the Petitioner. The Criminal Revision Application No.3 of 2005 stands disposed of accordingly.

ii) It is made clear that the remedies of the Respondent No.1 on account of any further default made by the Petitioner after 5th January 2005 is kept open.

iii) Writ Petition is partly allowed in above terms. No order as to costs.

iv) Parties to act upon an authenticated copy of this order.

JUDGE